

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0007 RST**

**Use and Excise Taxes — Aircraft
Transfer and Registration Fees — Aircraft
Tax Administration — Penalty
For Tax Periods: 1995 through 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Use Tax — Aircraft

Authority:

Taxpayer protests the proposed assessment of Indiana use tax on the 1995 transfer of an airplane.

II. Excise Tax and Transfer Fees — Aircraft

Authority: IC 6-6-6.5-8; IC 6-6-6.5-12

Taxpayer protests imposition of Indiana excise taxes and transfer fees on the 1995 transfer of an airplane.

III. Excise Tax and Registration Fees — Aircraft

Authority: IC 6-6-6.5-3; IC 6-6-6.5-12

Taxpayer protests imposition of Indiana excise taxes and registration fees on its airplane for 1996 and 1997.

IV. Tax Administration — Penalty

Authority: IC 6-6-6.5-19; IC 6-8-10-2.1;

Taxpayer protests the imposition of penalties on its failure to remit Indiana excise and use taxes.

STATEMENT OF FACTS

A non-resident corporation ("Corporation") purchased an airplane from an out-of-state seller. The airplane was purchased in 1995 for use in Indiana. Use taxes and registration fees were eventually paid on this initial transaction. Later in 1995, the Corporation transferred the airplane title to taxpayer – the Corporation's President and Indiana resident. On this transfer, taxpayer failed to pay use tax, excise tax, or transfer fees. Additionally, in 1996 and 1997 taxpayer submitted excise taxes and registration fees for the airplane on behalf of the wrong entity, the Corporation.

This protest involves three issues: (1) the assessment of use tax on the transfer of the airplane from the Corporation to taxpayer; (2) the nonpayment, by taxpayer, of 1995 excise taxes and transfer fees; and (3) the application of excise taxes and registration fees to the wrong taxpayer in 1996 and 1997.

I. Use Tax — Aircraft

DISCUSSION

According to the Compliance Division, taxpayer neither paid sales tax nor remitted use tax on the transfer of the airplane from the Corporation to the taxpayer. Taxpayer, in response, argues that such payments were made. Taxpayer directs the Department's attention to the check dated August 31, 1995, paid to the order of the Indiana Dept. of Revenue in the amount of \$2,050.00. Taxpayer argues that this check represented payment for the use tax liability incurred when the airplane was transferred from the Corporation to taxpayer. Any remaining use tax liability, according to taxpayer, should be the responsibility of the Corporation.

Taxpayer is an officer of the Corporation. When the Corporation initially purchased the airplane, taxpayer was sent a letter (as the Corporation's President) from the Department indicating that use tax was due on the purchase price.

From the correspondence between taxpayer and the Department, it appears that the Corporation purchased this airplane with the intent of transferring ownership to taxpayer at a later date. Subsequent documentary evidence supports this conclusion.

The Aircraft Bill of Sale submitted to the FAA (see Form 8050-2) indicates that the airplane was sold to the Corporation on March 11, 1995. The Indiana Application for Aircraft Registration or Exemption, dated August 31, 1995, lists the Corporation as the airplane's owner – and taxpayer as lessee. (In a May 17, 1995, letter the Corporation informed the Department that its lease with taxpayer had been cancelled.) Additionally, in a sworn affidavit submitted to the Department the seller identified the Corporation as the purchaser of the airplane. However, FAA Registration records subsequently discovered by the Department listed taxpayer, as of September 15, 1995, as the registered owner of this airplane.

The facts indicate the existence of two taxable transactions. The first, the sale of the airplane to the Corporation; the second, the transfer of the airplane from the Corporation to taxpayer.

Generally, use tax "is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction." Specific to the use of aircraft in Indiana, IC 6-2.5-3-2(b) instructs:

The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

According to IC 6-6-6.5-2 "any resident of this state who owns an aircraft, and any nonresident who bases an aircraft in this state for more than sixty (60) days, shall register the aircraft with the department."

The airplane was acquired – twice – in transactions covered by IC 6-2.5-3-2(a). The airplane was based in Indiana for more than sixty (60) days when owned by the non-resident Corporation. Taxpayer, of course, is an Indiana resident. Consequently, use tax was due on each transaction. In other words, use tax should have been paid twice – first, when the Corporation acquired the airplane from the original seller; and second, when taxpayer acquired the airplane from the Corporation.

Use tax was paid on one of these transactions (see August 31, 1995, payment). This payment, however, represented the use tax liability resulting from the first transaction (seller to Corporation) and not from the second (Corporation to taxpayer). Correspondence among the Corporation, taxpayer, and the Department clearly indicates that the August payment was tendered and accepted as payment for use taxes resulting from the Corporation's initial purchase

of the airplane. At the time of this payment, the Department was not even aware that a subsequent taxable transfer had, in fact, occurred. Additionally, neither taxpayer nor the Corporation acknowledged the existence of any subsequent transfer as the airplane's 1995 Indiana registration was never transferred from the Corporation to taxpayer.

The Department finds that, for all the aforementioned reasons, taxpayer owes use tax on the acquisition of the airplane from the Corporation.

FINDING

Taxpayer's protest is denied.

II. Excise Tax and Transfer Fees — Aircraft

DISCUSSION

Taxpayer, an officer (President) of the buyer-Corporation, paid the 1995 excise tax and registration fee associated with the Corporation's acquisition of the airplane. However, when the aircraft was transferred from the Corporation to taxpayer, new excise tax and transfer fee liabilities were created. (See IC § 6-6-6.5-8 and IC § 6-6-6.5-12.) Taxpayer paid neither liability. As the Department has previously found that the transfer of the airplane from the Corporation to taxpayer represented a taxable transaction (which created new liabilities – see Issue I), imposition of the additional excise tax and transfer fee is appropriate.

FINDING

Taxpayer's protest is denied.

III. Excise Tax and Registration Fees — Aircraft

DISCUSSION

In 1995 taxpayer failed to inform the Department that the airplane in question had been transferred from the Corporation to taxpayer. Since the Department had no record of this transfer, the 1996 and 1997 excise taxes and registration fees submitted by taxpayer for the airplane were credited to the Corporation's accounts rather than taxpayer's. After belatedly learning of this 1995 transfer, the Department then billed taxpayer for delinquent excise taxes and registration fees for 1996 and 1997.

Owners of Indiana based aircraft must apply annually for a certificate of registration. (See IC § 6-6-6.5-3.) Additionally, an annual license excise tax is imposed on all taxable aircraft. (See IC § 6-6-6.5-12). Taxpayer's failure to properly transfer its registration in 1995 resulted in the wrong entity – the Corporation – being billed (in 1996 and 1997) for the annual excise taxes and registration fees. Taxpayer's oversight resulted in erroneous billing information being sent to taxpayer – as taxpayer was also an officer of the Corporation. Such error, regardless of origin, should not result in additional tax liabilities for the owner of this airplane. The taxes and fees were due; the taxes and fees were timely paid.

FINDING

Taxpayer's protest is sustained.

IV. Tax Administration — Penalty

DISCUSSION

The taxpayer protests the imposition of penalties for its failure to timely remit use and excise taxes on the 1995 transfer of aircraft from the Corporation to taxpayer.

IC § 6-6-6.5-19 imposes a penalty of "the greater of twenty dollars (\$20) or twenty percent (20%) of the unpaid [annual license excise] tax." This penalty was imposed because taxpayer failed to register its airplane in 1995 after having received it from the Corporation. Additionally, pursuant to IC § 6-8.1-10-2.1(e), a ten percent (10%) penalty was imposed (as measured by the amount of use tax due) because taxpayer failed to remit any use tax on the subsequent transfer of the airplane from the Corporation to taxpayer.

Taxpayer has failed to establish a reasonable cause supporting its failure to timely remit these excise and use taxes. The Department, therefore, finds that the assessment of both penalties is appropriate.

FINDING

Taxpayer's protest is denied.